

UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27

ECDC ENVIRONMENTAL, L.C.,

and

Employer,

Case No. 27-RC-7942

UNITED MINE WORKERS OF  
AMERICA, AFL-CIO, REGION IV,

Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held on July 13, 1999 before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and will effectuate the purposes of the Act to assert jurisdiction herein 1/

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All production and maintenance employees of the Employer employed at its East Carbon City, Utah facility, including plant clerical employees ~ bathhouse, laborer, mechanic, operator, truckdriver, Rotary-North, cell, and wash bay employees;

EXCLUDED: office clerical employees, guards, supervisors within the meaning of the Act ~/, and all other employees. 4/

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the

election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

## UNITED MINE WORKERS OF AMERICA, AFL-CIO, REGION IV

### LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the National Labor Relations Board, Region 27 Regional Office, 600 17th Street, Suite 700 North, Denver, CO 80202-5433, on or before August 16, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review

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operate to stay the requirement here imposed.

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### RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 26, 1999.

DATED at Denver, Colorado, August 12, 1999.

B. Allan Benson, Regional Director  
National Labor Relations Board  
700 North Tower, Dominion Plaza  
600 Seventeenth Street  
Denver, Colorado 80202-5433  
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commencement thereof and who have not been rehired or reinstated before the

11 The Employer, a division of Allied Waste Industries, Inc., operates a non-hazardous waste disposal and landfill site on approximately 2,200 acres in East Carbon City, Utah. At present there are two "cells" on the property into which trucks dump waste. There is also a "rotary dump" facility. At the rotary dump rail cars are mechanically overturned, and the waste~ directly dumped into the landfill. The Employer also operates a "solidifier". There, liquid waste is off loaded from rail cars and solidified with ash or dirt. Finally, there is an "intermodal" area where waste filled containers on rail cars are off-loaded onto trucks and the waste then dumped into a "cell".

The majority of the waste processed by the Employer is transported to the property by Union Pacific Railroad Company on its rail line that runs adjacent to the Employer's property. The Employer maintains its own railroad tracks around the rotary dump. Union Pacific shunts its cars on a spur to a point just outside the Employers property. The record is unclear with respect to the ownership of the spur. To move the cars onto its property, the Employer uses two leased locomotives operated by its employees. These employees are engaged in other of the Employer's production duties when not operating a locomotive. These employees do not operate on the Union Pacific rail line nor do Union Pacific employees operate on the Employer~s property. In addition to the waste transported to the property by Union Pacific, the Employer also receives some waste that is delivered to the property by truck. This waste comes from

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municipalities and private enterprises located in various states throughout the country.

The Employer initially asserts that the petition in this matter should be dismissed for lack of jurisdiction based on its relationship with Union Pacific, a carrier within the meaning of the Railway Labor Act, 45 U.S.C. Section 151 et seq. (1988) as amended December 29, 1995. The Employer argues that it is an employer subject to the Railway Labor Act because: (1) it is controlled by or under common control of a carrier by railroad and (2) it is an employer that operates equipment or facilities or performs a service in connection with the transportation, receipt, delivery, elevation and handling of property by railroad.

With respect to the assertion of common control, the Employer contends that Union Pacific has “almost complete control” of its rotary dump, solidifier, and intermodal operations. The Employer asserts that control is demonstrated by the following facts: (1) Union Pacific determines when materials will arrive and when the Employer’s employees must complete work on the materials, (2) Union Pacific controls the transfer of rail cars from its line to the spur; and (3) the Employer’s employees perform work according to Union Pacific’s instructions.

With respect to the argument that its operations establish it as a railroad, the Employer argues that its offloading of waste that has arrived via interstate rail and return of empty rail cars to the control of Union Pacific is the operation of equipment or facilities or performance of a service in connection with the transportation, receipt, delivery, elevation and handling of



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In cases where NLRB jurisdiction is clear, the Board does not follow its general practice of referring cases to the National Mediation Board (NMB) for an initial ruling, when a party has raised a claim of Railway Labor Act jurisdiction. *System One Corp.*, 322 NLRB 732 (1996). In deciding the issue of whether NLRB jurisdiction is clear and that deferral is unnecessary the Board applies the two-part test used by the NMB to determine its own jurisdiction. Under the two-part test of the NMB, the NMB first determines whether the nature of the work performed is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether a common carrier or carriers exercise direct or indirect ownership or control of the employer. Both parts of the test must be satisfied for the NMB to assert jurisdiction. See *United Parcel Service*, 318 NLRB 778 (1995); *enfd.* 92 F.3d 1221 (D.C. Cir. 1996).

In this case the evidence establishes that the Employer is neither directly nor indirectly owned by a rail carrier. Further, the record does not establish that Union Pacific exercises direct or indirect control of the Employer. While Union Pacific delivers rail cars from its line to the spur, there is no evidence that the Employer's employees perform work according to Union Pacific's instructions. Rather, waste is simply delivered to the Employer's facility via rail. Once the waste is delivered, Union Pacific has no involvement or control over how the Employer processes the waste or how the Employer's employees perform their work. Union Pacific employees communicate with the Employer's employees only in order to coordinate the arrival and departure of rail cars to and from the Employer's facility. This communication is no more than a necessary adjunct of

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Union Pacific managing its rolling stock and the Employer efficiently managing its own business. I find this evidence insufficient to show control of the Employer's employees by the rail carrier.

The record does not establish the functions performed by the Employer's employees as those traditionally performed by railroad employees. The evidence establishes that the Employer is engaged-in processing and disposing of non-hazardous waste. Its employees are engaged in activities consistent with those functions. While the Employer utilizes locomotives to move some waste around the facility, those actions are performed in connection with the disposal of waste and are not work performed that is traditionally performed by employees of rail carriers. In view of the foregoing and based on the record, as a whole, I find the Employer is an Employer subject to the NLRA and deferral of the issue of jurisdiction to the NMB is unwarranted.

Because the Employer otherwise meets the Board's jurisdictional requirements, as evidenced by stipulation of the parties at the hearing that the Employer purchases and receives at its Utah facilities goods and supplies valued in excess of \$50,000 directly from points outside the State of Utah, the Employer is found to be an employer engaged in commerce within the meaning of Section 9(c)(1), (6) and (7) of the Act.

~ The parties stipulated that the appropriate unit should include the Employer's production and

commencement thereof and who have not been rehired or reinstated before the maintenance employees, including bathhouse, laborer, mechanic, operator, truck driver, Rotary-North, cell and wash bay employees. The Employer employees approximately forty-five employees in

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these classifications. The Employer would exclude as office clerical employees approximately eight employees it classifies as “administrative”. The Petitioner seeks to include five of these employees in the unit. The Petitioner argues that four are plant clerical employees and that one administrative employee should be included in the unit because a portion of her work involves scaling waste as it arrives at the Employer’s facility – a function performed by other production and maintenance employees included in the unit.

Allied Waste, the Employer’s parent company, operates a district office at the East Carbon City, Utah facility. The district office is generally responsible for the operation of the East Carbon City facility, a second facility in Utah and two facilities in California. Four employees classified by the Employer as administrative employees, Kristy Candelaria, Judee Zachreson, Alberta Manchester, and Tina Vogrinec, are employed in the district office. These administrative employees are supervised by the district controller, Curt Trace.

No party takes the position that the administrative employees, assigned to the district office, should be included as a general unit classification. The record evidence shows that all four of these administrative employees are employed as office clerical employees, a job classification customarily excluded from a production and maintenance unit. In view of the foregoing, and because the record reflects that these employees otherwise do not share sufficient community of interest with other employees in the Unit, they are excluded from the appropriate unit. The contention of the Petitioner that Candalaria should be included based on

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The operational center specific to the East Carbon City facility is located in a building .about one mile from the district office. It is referred to as the landfill office”. The landfill office contains approximately five offices, a lunchroom and kitchen, a shower room and a locker room. The East Carbon City operations are managed from this facility by operations manager Brent Anderson, assistant operations manager Jeff Green, district engineer Darren Olsen, and human resources and health and safety manager Dennis Molosi. Administrative employees Amanda McFarland, Jaylene Mahleres, Jana Johnson, and Betty Jo Franco are assigned to the landfill office. The record also discloses that there are two other offices on the Employers property, a rotary dump office, apparently at the rotary dumpsite, and a maintenance office the location of which is unclear. There are apparently no administrative employees employed in these latter two offices.

As stated, Petitioner seeks the inclusion of Franco, Mahleres, Johnson, and McFarland as plant clerical employees. Petitioner asserts that their job functions are related to the production process and that they otherwise share a community of interest with the production and maintenance employees. The administrative employees in the landfill office are supervised by Anderson, Green or Olsen. These supervisors and managers also supervise the production and maintenance employees who the parties stipulated as appropriately part of any unit. The administrative employees in the landfill office use the same time clock, lunchroom and parking lot as those used by the production and maintenance employees. In addition, administrative employees

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in the landfill office attend safety meetings along with production and maintenance employees. The record establishes that all administrative employees and production and maintenance employees are hourly paid and that they enjoy the same benefits. While production and maintenance employees wear a standard uniform, the administrative employees dress casually.

The record with respect to the job functions of the four administrative employees in the landfill office is as follows. Franco works with production reports and “inputs” preventative maintenance scheduling that is used by maintenance manager Roger Nielson. Franco is in regular contact with Nielson during the working day to carry out these functions. Franco is also responsible for purchasing office and shop supplies

Mahleres is responsible for creating bills of lading from customer calls for pickup and delivery of their waste by rail. At month’s end she reconciles, on a computer terminal, waste arrival information with particular bills of lading. Mahleres, by telephone, also resolves discrepancies between shipments and billing with Union Pacific. Mahleres is in contact to some extent with at least one rotary dump employee and gets that employee’s assistance in gathering shipping and billing information.

Jana Johnson is directly responsible to district engineer Olsen and performs what the Employer describes as “manifest control”. Johnson receives Mahleres’ completed bills of



commencement thereof and who have not been rehired or reinstated before the lading. She then produces a manifest with a specific railway car identified as the transportation for a load of waste, a bill of

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loading number, and a description of the material to be transported. Mahleres is also responsible for compiling weight information from the scale tickets produced by the weighing of incoming waste. Mahleres then sends that information to the district office where customers are billed. Johnson biweekly compiles work hours, apparently from the timecards of the production and maintenance employees. She transmits those totals to the district office. Johnson also types for Olsen and performs Mahleres' duties during her absence.

McFarland drives around the property to record railway car identification numbers and provides these numbers to Mahleres. McFarland also compiles production reports and time studies used by Anderson and Green in an effort to improve production. Anderson testified that McFarland "collects the arrivals and does the releases". The record contains no explanation of these functions. Finally, McFarland performs typing and makes copies for Anderson.

The record does not disclose the percentage of the work time that McFarland and Johnson perform typing and copying. Nevertheless, it appears from the record that these functions are a small portion of their duties.

The Board distinguishes between office clerical and plant clerical employees based generally on whether employees' duties are related to the production process (plant clerical) or related to general office operations (office clerical). The distinction is rooted in community-of-interest concepts. *Cook Composites & Polymers Co.*, 313 NLRB 1105 (1994).

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The record evidence supports a conclusion that the four administrative employees employed in the Employer's landfill office are plant clerical employees. Their duties are closely related to the production process rather than general office operations. Thus, the record demonstrates that the majority of duties performed by the four administrative employees in the landfill office are performed as an integral part of the completion of the waste disposal process, such as the preparation and reconciliation of shipping records. The information compiled or recorded by one administrative employee, related to the waste disposal process is passed both from administrative employee to administrative employee as well as to management employees to assist in the waste disposal process. Thus, the bills of lading created by Mahleres are passed on to Johnson for the performance of her work. The production reports and time studies of McFarland are used by Anderson and Green to devise ways to improve production. None of the administrative employees assigned to the landfill are involved in customer billing or payroll preparation – traditional office clerical functions. The time card function of Johnson and the ordering of supplies by Franco are functions historically viewed as those of plant clerical employees. See *Hamilton Halter Co.*, 270 NLRB 331 (1984).

Finally, the record demonstrates a close community of interest between the landfill administrative employees and production and maintenance employees. The administrative employees in the landfill office share common supervision with production and maintenance employees. The record also establishes significant interchange among those employees in the recording of

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information to assist in the production process. The landfill office administrative employees are hourly paid; enjoy the same benefits; share the same lunchroom, time clock, and parking lot; and attend the same safety meetings as production and maintenance employees.

In these circumstances, I find that the administrative employees employed at the Employer's landfill office are plant clerical employees and are properly included in the appropriate unit. See *Brown & Root, Inc.*, 314 NLRB 19 (1994); *Columbia Textile Services, Inc.*, 293 NLRB 1034(1989).

~/ The Employer seeks to exclude Gilbert Palacios as a supervisor within the meaning of the Act, while the Petitioner would include Palacios in the unit.

The record reveals that Palacios is employed in the rotary dump along with approximately six other employees. Palacios reports directly to assistant operations manager Green who is responsible for the daily landfill operations. According to operations manager Anderson, Palacios is responsible for the daily activities in the rotary dump. Anderson summarily testified that Palacios directs the six employees' daily activities, that he has the authority to and does assign overtime, that he has the authority to "send home an employee early from work", that he approves vacations, and that he is involved in disciplinary matters and the determination of whether or not to grant pay raises. Additionally, the record contains copies of a number of daily time cards for approximately six employees that are signed by Palacios in a signature slot

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entitled "supervisor". Finally, according to Anderson, Palacios has his own office located at the  
rotary dump.

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This office contains a computer for computing scale weights, file cabinets, and a desk.

The record reflects that a part of Palacios' duties are to operate the rotary dump scale. The record does not reflect what part of Palacios' working time is spent performing this function. There is no record evidence to show specifically what duties and responsibilities Palacios performs during the remainder of his working time. Anderson testified that other employees operate the scale in this office and it is "customary" for employees to be in that office even during Palacios' absence.

While Anderson testified that Palacios directs the employees' daily activities, the record contains no evidence to determine whether in doing so, Palacios exercises independent judgement or whether these work assignments are routine in nature. With respect to Palacios' involvement in disciplinary matters Anderson testified only that Palacios' attends disciplinary hearings and that Anderson "will take his input on an employee, what has happened~.]" and that there is "not a lot of discipline" dealt with at the facility. With respect to determining wage raises, Anderson testified only that he, Anderson, contacts Palacios and that "~W}e will take his input on the employees and compile together." Anderson also testified that for pay raises, he also receives "input" from Green, and that Green's and Palacios input is "averaged. With respect to other terms and conditions of employment, the record reveals only that Palacios is hourly paid, and receives one dollar more per hour than other employees at the rotary dump.

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The burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists. *The Ohio Masonic Home, Inc.*, 295 NLRB 390, 393 (1989). The presence or absence of the exercise of independent judgment is an important factor weighed by the Board in making its supervisory determinations. *Sears, Roebuck & Co.*; 304 NLRB 193 (1991). In addition, the Board holds that conclusionary statements made by witnesses in their testimony, without supporting evidence, does not establish supervisory authority. See *American Radiator Corp.*, 119 NLRB 1715, 1718 (1958). The mere fact that Palacios signed time cards, the latest of which was signed approximately six months prior to the hearing in this matter, in an area on the cards identified with the word "supervisor" is insufficient in and of itself to establish supervisory status. No evidence was introduced to establish that Palacios actually approved hours of work, overtime, or vacation, using independent judgment. In view of the foregoing, I find that the Employer has failed to establish that Palacios is a supervisor within the meaning of the Act. Because Palacios otherwise appears to share a sufficient community of interest with other Unit employees, I will include him in the unit.

The parties agreed, and the record supports a finding, that Brent Anderson, Jeff Green, Darien Olsen, Dennis Molosi and maintenance manager Roger Neilsen are statutory supervisors and should be excluded from the Unit. I find that these individuals are excluded from the Unit.

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4/ The Petitioner would include Candalaria, an administrative employee in the district office, regularly employed truck driver, Able Velasquez, and Palacios



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in the unit as scale operators. The record, however, discloses that the Employer employs no employees classified as scale operators. All employees, except Candalaria, who perform scaling functions are otherwise included in the unit based on their assignment to classifications admittedly in the unit. It is therefore unnecessary to determine the inclusion or exclusion of scale operators as a classification. The record does show that Candalaria, as a fraction of her duties in the district office, operates a scale. As discussed supra, Candalaria is separately supervised and her functions are otherwise those of an office clerical. I find that Candalaria is an office clerical who is not appropriately a part of the unit.

The Employer utilizes employees of a subcontractor, SOS Temporary Services, to perform “scale operation work”. The parties stipulated that the employees of SOS Temporary Services performing scale operation work for the Employer should be excluded from the Unit and I so find.

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UNITED STATES OF AMERICA  
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7942

AFFIDAVIT OF SERVICE OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF  
ELECTION

I, the undersigned employee of the National Labor Relations Board, being duly SWORN, depose and say that on the date indicated above, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

ECDC Environmental, L.C.  
Attention: Dave Fisher  
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United Mine Workers of  
Amenca, AFL-CIO, Region IV

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I	Subscribed	d sworn to before me s	DESIGNATED AGENT	I
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~	day of	1999.	f7'—~'~Z.J 6~i—'	I
	August,		NATIONAL LABOR RELATIONS BOARD	

